

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF APPEALS

APPLICANT: GROLLITSCH, Helmut, et al

SERIAL NO.: 10/672,402

ART UNIT: 3653

FILED: September 29, 2003

EXAMINER: Hageman, M.

TITLE: METHOD AND APPARATUS FOR DETECTING A CRACKED OR BROKEN CASE

SUPPLEMENT TO APPLICANT'S BRIEF IN SUPPORT OF APPEAL

Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Sir:

This is a supplement to an appeal from the Final Rejection of Claims 39-42 and 44-51.

The supplement is being re-submitted in response to the Notice of Non-Compliant Appeal Brief of September 28, 2007, having a response being due by October 28, 2007. A copy of which is attached hereto.

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CERTIFICATE OF MAILING UNDER 37 CFR 1.8(a)

Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Sir:

I hereby certify that the attached correspondence comprising:

SUPPLEMENT TO APPEAL BRIEF

is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to:

Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

on October 15, 2007.

Respectfully submitted,

<u>October 15, 2007</u>	/Andrew W. Chu/
Date	John S. Egbert
	Reg. No. 30,627
	Andrew. W. Chu
Customer No. 24106	Reg. No. 46,625
	Egbert Law Offices
	412 Main St., 7 th Floor
	Houston, Texas 77002
	(713) 224-8080
	(713) 223-4873 fax

TABLE OF CONTENTS

	<u>Page</u>
Real Party in Interest	1
Related Appeals and Interferences	1
Status of Claims	1
Status of Amendments	2
Summary of Claimed Subject Matter	2
Grounds of Rejection to be Reviewed on Appeal	4
Argument	5
I. OVERVIEW	5
II. THE INVENTION IS NOT ANTICIPATED BY THE PRIOR ART	5
A. THE INVENTION IS NOT ANTICIPATED BY THE '170 PATENT	6
B. THE PROPER VERSION OF THE METHOD CLAIM WAS NOT CONSIDERED AGAINST THE '170 PATENT	7
III. THE INVENTION IS NOT MADE OBVIOUS BY THE PRIOR ART COMBINATION	7
IV. SUMMARY	11
Claims Appendix (Claims 39-42 and 44-51)	13
Evidence Appendix	17
Related Proceedings Appendix	18

REAL PARTY IN INTEREST

The persons named in the caption, Mr. Helmut GROLLISTCH and Mr. Burkhard LICKFETT, are the inventors only. The Assignee, UNITECH, Inc. is the real party in interest in the present appeal.

RELATED APPEALS AND INTERFERENCES

There are no other related appeals or interferences known to Applicant which will directly affect or be directly affected by or have a bearing on the Board's decision in the present appeal.

STATUS OF CLAIMS

Originally, Claims 1 - 21 were filed in this case as an original filing of a non-provisional application on September 29, 2003.

After the first Office Action of July 7, 2006, Applicant amended the claims to place the application into a condition for allowance over the cited prior art. It was indicated that Claims 9 and 21 were allowable if rewritten in independent format. Claims 1-21 were canceled, and the subject matter was re-presented as Claims 22-38. The independent Claims 22 and 32, corresponding to Claims 9 and 21, incorporated several of the original claims and presented in independent format.

After another Office Action on November 13, 2006, Applicant made further amendments to the claims in response to prior art combinations of old prior art. Claims 22-38 were canceled, and the subject matter in allowable form was re-presented as Claims 39-51.

A Final Action was finally received on April 4, 2007. The Final Action included rejections similar to the previous Office Action. It is important to note that the rejections were based upon prior art that was available and considered since the first Office Action on July 7, 2006. In response, Applicant filed the present appeal and submitted a concurrent amendment to place Claims 39-42 and

44-51 into a condition for appeal. Claims 39-42 and 44-51 are the pending claims at issue in the present appeal. Claim 43 was canceled to reduce the number of issues on appeal.

Claims 1-38 and 43 are currently rejected and canceled.

Claims 39-42 and 44-51 are the claims at issue in the present appeal.

STATUS OF AMENDMENTS

An amendment has been concurrently filed on September 4, 2007 with the present Appeal Brief, subsequent to the Final Rejection of April 4, 2007. The amendment corrects a typographical error in Claim 46, which is relevant to the condition for appeal and cancels Claim 43 to reduce the number of issues on appeal from three to two.

SUMMARY OF CLAIMED SUBJECT MATTER

The present invention relates to devices for determining the quality of a container or case. More particularly, the present invention relates to the inspection of cases that can contain a plurality of fluid containers therein. Additionally, the present invention relates to a quality control apparatus which utilizes deflection techniques to determine the existence of a cracked or broken condition in the object being controlled.

The first independent claim (Claim 39) is an apparatus for detecting a cracked or broken case. A frame (See Paragraph [0038], ll. 2-4, 7-9, Paragraph [0039], ll. 2-5, Paragraph [0040], ll. 3-5, reference numerals 90, 92, 94, 96 and 98 in Figures 2-4) has a conveyor means mounted thereon for moving the case along the frame. A first ram means is affixed to the frame for applying a force onto a surface of a wall of the case. A second ram means is affixed to the frame and positioned in a different location on the frame from the first ram means. The second ram means applies a force onto another surface of the case. There is a sensor means cooperative with each ram means. The sensor

means detects when the surface of the wall of the case has deflected beyond a desired amount. The apparatus further includes an ejection means affixed to the frame and cooperative with the sensor means for ejecting the case directly from the conveyor means when the wall of the case has deflected beyond the desired amount.

The "means + function" terms of the present invention are described in detail and identified as follows:

Claim	term	specification and drawings
39	conveyor means	Figures 1 and 2, reference numeral 16; specification, Paragraphs [0016] ll. 2,6; [0019] ll. 5, 7-8; [0033] ll.1-4; [0034] ll. 5-8.
39	first ram means	Figures 1, 2 and 4, reference numeral 22; specification, Paragraphs [0016] ll. 2-4; [0017] ll. 2-3; [0029] ll.1-2; [0030] l. 6; [0031] l. 1; [0038] ll. 6-7.
39	second ram means	Figure 1, reference numeral 26; specification, Paragraphs [0016] ll. 7-8; [0018] ll. 1-7; [0029] l.2; [0035] ll. 1-5.
39	sensor means	Figure 1, reference numeral 32; specification, Paragraphs [0016] ll. 3-5; [0029] ll. 4-5; [0031] ll.20-21.
39	ejection means	Figures 1, 3 and 4, reference numeral 38; specification, Paragraphs [0016] ll. 5-7; [0032] ll. 1-4; [0039] ll.1-3.
42	sensor means	Figures 1 and 2, reference numerals 52, 56; specification, Paragraphs [0017] ll. 6-8; [0022] ll. 7-8; [0031] ll.6-8, 13-15.
44	positioning means	Figure 1, reference numeral 82; specification, Paragraphs [0019] ll. 5-6; [0022] ll. 2-4; [0037] ll.12-13; [0039] ll. 3-4.
45	separating means	specification, Paragraphs [0019] ll. 6-8; [0029] ll. 7-8; [0039] ll.5-6.

Additional references to secondary structures of the ram means and the ejection means are contained throughout the specification, including a brief description of the structures in the summary section of the specification.

The second independent claim (Claim 46) is the method claim for use of the apparatus for detecting a cracked or broken case in the first independent claim (See Paragraphs [0020]- [0022]). The method of detecting a cracked or broken case includes forming a frame having a conveyor thereon (See Paragraph [0038], ll.2-3, reference numeral 16 in Figure 2). A plurality of cases is placed on the conveyor (See Paragraph [0028], 11.4-7, Paragraph [0029], ll. 5-6, reference numerals 12 and 14 in Figure 1) and moved in a direction on the conveyor (See Paragraph [0030], 11.1-2, Paragraph [0033], ll. 1-4). A position of one case of the plurality of cases on the conveyor is fixed (See Paragraph [0029], 11.3-5, Paragraph [0030], ll. 2-4, Paragraph [0034], ll. 1-3, reference numerals 32 and 40 in Figure 2), and a force is applied against a wall of the one case such that the wall deflects (See Paragraph [0030], 11.5-7, Paragraph [0031], ll. 12-13, reference numeral 44 in Figure 1, reference numeral 56 in Figure 2). A determination whether the deflection is beyond a desired amount is made (See Paragraph [0030], 11.6-9, Paragraph [0031], ll. 13-15), and the one case is ejected directly from the conveyor, (See Paragraph [0030], 11.1-2, Paragraph [0031], ll. 13-15, Paragraph [0032], ll. 1-4, reference numeral 38 in Figure 2) if the deflection is beyond the desired amount.

GROUNDS OF REJECTION
TO BE REVIEWED ON APPEAL

In the Final Office Action of April 7, 2007, it was indicated that Claims 39 - 42, and 44-45 were rejected under 35 U.S.C. § 102(b) as anticipated by European Patent No. 0043170 (the '170 patent) in view of British Patent No. 2,052,765 (the '765 patent). Claims 46-51 were rejected under 35 U.S.C. § 102(b) as being anticipated by European Patent No. 0043170.

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EXAMINER: Hageman, M.

TITLE: METHOD AND APPARATUS FOR DETECTING A CRACKED OR BROKEN CASE

SUPPLEMENT: Remarks

The index page and Pages 1-4 of the Appeal Brief are presented in response to the Notification of Non-Compliant Brief. The Examiner indicated that the full brief was not required for the response.

The Concise Explanation of the subject matter of the independent claim section has been corrected. The text mislabeled the second independent claim as "Claim 51" instead of "Claim 46". The reference has been corrected, and the section properly refers to Claim 46 as the second independent method claim. The summary of claimed subject matter now maps to the second independent claim, Claim 46.

The Grounds of Rejection section has also been corrected. Claim 43 was canceled, and the grounds for rejecting Claim 43 has now been deleted from the Appeal Brief. Claim 43 is not the subject of the present appeal.

Based upon the previously transmitted analysis and the present supplement, it is Applicants' contention that Claims 39-42 and 44-51 of the present invention are patentably distinguishable from the prior art and the prior art combinations.

The earlier filed Brief and present supplement are intended to assist the Board of Appeals in

examining the application and, in the course of explanation, may employ shortened or more specific or variant descriptions of some of the claim language. Such descriptions are not intended to limit the scope of the claims; the actual claim language should be considered in each case. Furthermore, the remarks are not considered to be exhaustive of the facets of the invention which render it patentable, being only examples of certain advantageous features and differences which Applicants' attorney chooses to mention at this time.

The present Supplement to Appeal Brief has been submitted in response to the Notification of Non-Compliant Brief, having a response being due by October 28, 2007. A copy of the Notification is attached hereto. No further fee is due.

Reconsideration of the application, as amended, and allowance hereof are respectfully requested.

Respectfully submitted,

<u>October 15, 2007</u>	<u>/Andrew W. Chu/</u>
Date	John S. Egbert
	Reg. No. 30,627
	Andrew W. Chu
	Reg. No. 46,625
Customer No. 24106	Egbert Law Offices
	412 Main St., 7 th Floor
	Houston, Texas 77002
	(713) 224-8080
	(713) 223-4873 fax



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EGBERT LAW OFFICES 412 MAIN STREET, 7TH FLOOR HOUSTON, TX 77002			ART UNIT	PAPER NUMBER

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Please find below and/or attached an Office communication concerning this application or proceeding.

Notification of Non-Compliant Appeal Brief (37 CFR 41.37)	Application No. 10/672,402	Applicant(s) GROLLITSCH ET AL.
	Examiner M. Hageman	Art Unit 3653
--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--		
<p>The Appeal Brief filed on <u>04 September 2007</u> is defective for failure to comply with one or more provisions of 37 CFR 41.37.</p> <p>To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within ONE MONTH or THIRTY DAYS from the mailing date of this Notification, whichever is longer. EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.</p>		
<ol style="list-style-type: none"> 1. <input type="checkbox"/> The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order. 2. <input type="checkbox"/> The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)). 3. <input type="checkbox"/> At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)). 4. <input checked="" type="checkbox"/> (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)). 5. <input checked="" type="checkbox"/> The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)) 6. <input type="checkbox"/> The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)). 7. <input type="checkbox"/> The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)). 8. <input type="checkbox"/> The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner and relied upon by appellant in the appeal, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)). 9. <input type="checkbox"/> The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)). 10. <input checked="" type="checkbox"/> Other (including any explanation in support of the above items): <p><u>c(5) The summary of claimed subject matter does not map the independent claim(46) on appeal to the specification by page, and line numbers and to the drawings if any.</u> <u>c(6) The grounds of rejection must identify each ground of rejection on appeal(claim 43 is canceled).</u> <u>The entire brief is not required, only the sections that were found defective..</u></p> <p style="text-align: right;"> DARLENE BROWN TENT APPEAL CENTER SPECIALIST</p>		